

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3511

United States of America,

Appellee,

v.

Enrique Solano-Machuca,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: April 4, 2003

Filed: April 7, 2003

Before LOKEN,* Chief Judge, BOWMAN, and WOLLMAN, Circuit Judges.

PER CURIAM.

Enrique Solano-Machuca pleaded guilty to illegal reentry following deportation after conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a), and the district court¹ sentenced him to 46 months imprisonment and 3 years supervised release. On appeal, counsel moved to withdraw under Anders v.

*The Honorable James B. Loken became Chief Judge of the United States Court of Appeals for the Eighth Circuit on April 1, 2003.

¹The HONORABLE RICHARD G. KOPF, Chief Judge, United States District Court for the District of Nebraska.

California, 386 U.S. 738 (1967), and filed a brief arguing that the district court erred in denying Solano-Machuca's motion for downward departure.

We reject Solano-Machuca's argument because we do not review discretionary decisions not to depart where there is no indication the district court believed it lacked the authority to do so. See United States v. Lopez-Arce, 267 F.3d 775, 783-84 (8th Cir. 2001). Further, having reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues.

Accordingly, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.